



2016-050

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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August 19, 2016

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Civil Service System — Personnel Boards
— Supernumerary Status — Sheriffs —
Office of Profit

A supernumerary sheriff may not serve on
the Geneva County Personnel Board.

Dear Mr. Eldridge:

This opinion of the Attorney General is issued in response to your request
on behalf of the Geneva County Commission.

QUESTIONS

(1) Is Supernumerary Sheriff Greg Ward prohibited from serving on the Geneva County Personnel Board under section 280 of the Constitution of Alabama because he would be holding more than one office of profit?

(2) If not, is he disqualified from serving because he is an employee of Geneva County or holds an elective office under the state or county?

FACTS AND ANALYSIS

Section 45-31-120, *et seq.*, of the Code of Alabama is a local act applicable to Geneva County establishing a civil service system and a personnel board for the county. ALA. CODE §§ 45-31-120 to 45-31-121 (2012). Section 45-31-120.03(a)(4) provides for the appointment of one member of the personnel board by a selection committee of employees from the sheriff's office, probate office, revenue commissioner's office, and road and bridge department. ALA. CODE § 45-31-120.03(a)(4) (2012). You have explained that the committee

wishes to appoint a supernumerary sheriff. You ask whether the supernumerary sheriff may hold a position on the personnel board while simultaneously serving as supernumerary sheriff.

Section 280 of article XVII of the Recompiled Constitution of Alabama prohibits any person from holding “two offices of profit at one and the same time under this state, except justices of the peace, constables, notaries public, and commissioner of deeds.” ALA. CONST. art. XVII, § 280. This Office has determined that “[t]he office of supernumerary sheriff is an ‘office of trust and profit’” and that “[a]nyone holding that office is prohibited from holding any other office of profit under this State.” Opinion to Mr. Clemons Roe, Supernumerary Sheriff, dated February 1, 1983, A.G. No. 83-00170. *Accord*, opinion to Honorable Carlton Mayhall, Jr., Circuit Judge, 25th Judicial Circuit, dated February 28, 1992, A.G. No. 92-00192.

“For a position to be considered a public office or office of profit, the individual holding that position must: (1) be elected or appointed, (2) be appointed for a certain time and receive a fixed compensation, and (3) exercise a part of the sovereign power of the state.” Opinion to Honorable Milton E. Barker, Jr., Attorney, City of Adamsville, dated April 15, 2003, A.G. No. 2003-127. A position on the personnel board is appointed. ALA. CODE § 45-31-120.03(a)(1)-(5) (2012). Moreover, members serve a fixed term of five years and are entitled to fixed compensation to be paid from the county general fund. ALA. CODE § 45-31-120.03(b) (2012); ALA. CODE § 45-31-120.04(b) (2012). The fact that the supernumerary sheriff may elect not to receive compensation for his membership on the personnel board has no bearing on whether such membership constitutes an office of profit. Opinion to Dr. Leslie S. Wright, Chairman, Alabama State Ethics Commission, dated January 25, 1979, A.G. No. 79-00344.

Finally, the question becomes whether the personnel board is part of the county such that it exercises the sovereign power of the state. Here, the county exercises control over the personnel board. Members are appointed by county officers, and members and expenses of the personnel board are paid from the county general fund. ALA. CODE § 45-31-120.03(a)(1)-(5) (2012); ALA. CODE § 45-31-120.21 (2012); *cf.*, opinion to Honorable Charles R. Stephens, Attorney, Walker County Civil Service Board, dated November 1, 2005, A.G. No. 2006-012 (in which the Governor, not county officers, appointed members of the board). The county provides an office in the county courthouse for the meetings of the personnel board and authorizes a personnel director and clerks to assist the personnel board. ALA. CODE § 45-31-120.02(b) (2012); *cf.*, *Stephens* (holding that a board was not controlled by the county if the county commission did not control *any* actions of the board).

In addition, this Office would be remiss to ignore the intertwined relationship between the county and the personnel board as the latter administers the entire civil service system for the county. This close relationship is evidenced by language providing that the county acts "in conjunction with" the personnel board regarding the hiring of certain employees. ALA. CODE § 45-31-121 (2012). The word "conjunction" means "the act of conjoining or state of being conjoined: union, association, combination," or "an instance of conjoining or coming together." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 480 (2002). By statute, then, the personnel board is combined or associated with the county, at least to some extent. These provisions, taken together, demonstrate that the personnel board exercises the sovereign power of the state.

Accordingly, because both positions are offices of profit, a person may not serve as a supernumerary sheriff and a member of the personnel board. The answer to your first question renders your second question moot.

CONCLUSION

A supernumerary sheriff may not serve on the Geneva County Personnel Board.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact me.

Sincerely,

LUTHER STRANGE
Attorney General
By:


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Chief, Opinions Section